

VIRGINIA DEPARTMENT OF EDUCATION  
Division of Special Education and Student Services  
Office of Dispute Resolution & Administrative Services

**ANNUAL REPORT  
OF THE  
DISPUTE RESOLUTION SYSTEMS  
AND  
ADMINISTRATIVE SERVICES**

- Due Process Hearing System
- Mediation Services
- Complaints Resolution System
- Administrative Services

Reporting Period: July 1, 2007– June 30, 2008

Reporting Date: August 15, 2008

This review serves to assist the Virginia Department of Education (VDOE) in:

- ensuring compliance with the federal and state mandates governing the dispute resolution systems;
- identifying future training activities, particularly for hearing officers and mediators;
- identifying and addressing systemic issues impacting local school divisions; and,
- assessing the strengths and challenges of each system.

This analysis serves as a reporting mechanism to VDOE's management team responsible for the development of VDOE's State Performance Plan to the U.S. Department of Education's Office of Special Education Programs and for other data collection reports. It also provides information on this office's systems to VDOE staff and consumer groups listed at the end of this report.

Questions regarding the content of this report may be directed to the Office of Dispute Resolution and Administrative Services at (804) 225-2013. Information regarding the office's services is available on the web at: <http://www.doe.virginia.gov/VDOE/dueproc>



## PART I DUE PROCESS HEARING SYSTEM

- Baseline Data
- Hearing Officer Performance
  - ✓ Management of Hearings
  - ✓ Decisions
  - ✓ Managing the 45-Day Timeline
- Recertification of Hearing Officers
- Training of Hearing Officers
- Implementation Plans
- Follow-up System for Implementation Plans
- ODR/AS Initiatives

### A. BASELINE DATA

#### ☐ Number of Hearing Requests

	Reporting Periods		
	2007-08	2006-2007	2005-2006
Number of requests	87	69	98
Number dismissed/withdrawn <sup>1</sup>	62	48	68
Number of decisions rendered after full hearing <sup>2</sup>	16	8	15
Number pending as of 6-30 of relevant report year	9	13 <sup>3</sup>	15 <sup>4</sup>

#### ☐ Number of Hearing Requests – 5-Year Period

Year	2007-2008	2006-2007	2005-2006	2004-2005	2003-2004
Total Requests	87	69	98	107	127

<sup>1</sup>Cases closed without a hearing due to a mediation, or settlement agreement, or request for withdrawal.

<sup>2</sup>Redacted decisions are posted on the web: <http://www.doe.virginia.gov/VDOE/dueproc>

<sup>3</sup>The previously pending 13 cases were concluded during 2007-08; seven (7) were dismissed/withdrawn, five (5) decisions were rendered after full hearing; one (1) was dismissed by the Hearing Officer upon a pre-hearing motion.

<sup>4</sup>The previously pending 15 cases were concluded during 2006-07; eight (8) were dismissed/withdrawn, six (6) decisions were rendered after full hearing; one (1) was dismissed by the Hearing Officer after finding due process notice insufficient and that the parent did not file an amended notice.

☐ **Number of Decisions**

	Reporting Periods		
	2007-08	2006-2007	2005 – 2006
Number of Decisions	16	8	15
Initiating Party:			
Parent	12	8	14
LEA	4	0	1
Prevailing Party:			
Parent	1	1	0
LEA	12	6	13
Split	3	1	2

☐ **Additional Case Information**

During this reporting period, 5 cases, initiated in 2006-07, were closed.

Issues	Prevailing Party	
	LEA	Parent
<b>IEP:</b>		
✓ Parental Participation	2	0
<b>Eligibility:</b>		
✓ 504	1	0
✓ Educational Impact	1	0
✓ Residency	2	0
<b>FAPE</b>	3	0

☐ **Issues/Sub-issues and Disposition**

Issues / Sub-issues	2007 – 2008			
	# Issues	Prevailing Party		
		LEA	Parent	Split
<b>Total case issues</b>	39	31	7	1
<b>IEP</b>	18			
Placement	4	3	1	0

Issues / Sub-issues	2007 – 2008			
	# Issues	Prevailing Party		
		LEA	Parent	Split
Services	12	11	1	0
Development	2	1	1	0
<b>Due Process</b>	<b>7</b>			
Procedural violations	2	2	0	0
Consent override	2	2	0	0
Tuition reimbursement	3	1	1	1
<b>Discipline</b>	<b>8</b>			
Manifestation review procedure	5	3	2	0
Direct relationship	1	1	0	0
Removal to IAES	2	2	0	0
<b>Eligibility</b>	<b>2</b>			
Category	2	2	0	0
<b>Other</b>	<b>4</b>			
ESY	1	1	0	0
LRE	3	2	1	0

☐ **Issues and Disposition – Three-Year Period**

Issue	2007 - 2008			2006 - 2007			2005 - 2006		
	Total	LEA	P	Total	LEA	P	Total	LEA	P
<b>IEP</b>	<b>18</b>	15	3	<b>7</b>	7	0	<b>19</b>	17	2
<b>Due Process</b>	<b>7</b>	6 <sup>5</sup>	1	<b>3</b>	2	1	<b>2</b>	2	0
<b>Discipline</b>	<b>8</b>	6	2	<b>2</b>	0	2	<b>2</b>	2	0
<b>Eligibility</b>	<b>2</b>	2	0	<b>0</b>	0	0	<b>2</b>	2	0
<b>Other</b>	<b>4</b>	3	1	<b>0</b>	0	0	<b>2</b>	2	0
<b>Totals</b>	<b>39</b>	<b>32</b>	<b>7</b>	<b>12</b>	<b>9</b>	<b>3</b>	<b>27</b>	<b>25</b>	<b>2</b>

<sup>5</sup>The split issue was added to the LEA total as the issue resolution was more beneficial to the LEA in that decision.

## ☐ **Hearing Officers and School Divisions with hearing requests**

	Reporting Periods		
	2007 – 2008	2006 – 2007	2005 - 2006
Number of Hearing Officers	27	30	35
✓ assigned to hearings <sup>6</sup>	23	27	33
✓ assigned more than once	20	14	22
Number of school divisions involved in hearing requests	35	33 <sup>7</sup>	40

## ☐ **Resolution Sessions**

- The IDEA '04 imposed an additional requirement that upon receipt of the request for due process, the school division is required to schedule a Resolution Session with the parent. This provides both parties with the opportunity to resolve the issue. The Resolution Session is not the same option as mediation. If both parties agree to substitute mediation for the resolution session, the 30-day resolution period applies but a resolution session is not held. If both parties waive resolution, the due process request moves forward in accordance with the required timelines.

Resolution Sessions				
Reporting Year	Number of Cases	Resolution Sessions Held <sup>8</sup>	Agreement Reached	Waived
2005-2006	97	59	16	6
2006-2007	69	39	17	12
2007-2008	87 <sup>9</sup>	53	16	13

<sup>6</sup>Three of the hearing officers serve: 2 as complaint appeal reviewers and 2 as hearing officer evaluators. They are required to complete the same training requirements as the other hearing officers; however, while serving as a complaint appeal reviewer or hearing officer evaluator, they are not appointed to due process hearing cases.

<sup>7</sup>One case involved the VDOE as a co-party and one case involved State-Operated Programs.

<sup>8</sup>Cases where sessions were not held involved a written waiver of the session, substitution of mediation for the resolution session, or resolution of the case prior to the scheduled resolution meeting.

<sup>9</sup>In three (3) pending cases, there was not sufficient time for a resolution session to be held during the current reporting period. In four (4) cases, the hearing officer dismissed the case prior to a resolution session. In seven (7) cases, the parent withdrew the request prior to the meeting. In three (3) cases, a settlement agreement was reached before the meeting. In four (4) cases, the LEA initiated the due process hearing.

## □ Trends

- The number of requests for due process hearings (87) increased by 18 over last year's reporting period (69), and was only 10 less than reported in 2005-06. This total falls below the 5-year average (488 total cases, averaging 97.6 cases per year) by approximately 11 cases. In contrast, the 69 requests reported in 2006-07 were approximately 31 fewer than the then-current five-year average (501 total cases, averaging approximately 100.2 cases per year).<sup>10</sup>
  - Significantly, the number of hearing requests consistently declined between 2003 and 2007; however, in 2007-08, the number of requests increased, even though it remains below the five-year average. No single factor can be identified as contributing to the total number of due process requests, although effective mediation and school division efforts in early dispute resolution may have contributed to this total.
- A total of 35 school divisions were involved in hearing requests—two more than for the prior reporting period (33). This increase is not indicative of any major inconsistency with previous reporting periods. No particular school division or region experienced an influx of cases in this reporting period.
- Consistent with total year data for 2006-07, data from this current reporting period identified three repetitive themes:<sup>11</sup>
  - ✓ Parents are the more frequent initiating party.
  - ✓ LEAs are more often the prevailing party.
  - ✓ Issues focus primarily on IEP concerns.
- The number of hearing decisions (16) doubled that of the previous year (8)—a stark contrast to 2006-07, when the number of hearing decisions (8) was approximately 53% of the prior year's number (15 in 2005-06). That this year's total is nearly equal to that of 2005-6 perhaps suggests that the drop in 2006-07 was an anomaly.
- The number of case issues (39) addressed in this reporting period more than tripled the number of case issues (12) reported in 2006-07. Although IEP issues again comprised the greatest portion of case issues (18/39, or about 46% of case issues), IEP issues claimed about 58% (7/12) of total case issues in the previous reporting period.
- For two years, the number of hearing officers decreased (27 in 2007-08; 30 in 2006-07; 35 in 2005-06). This number represents a reduction of 98 hearing

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<sup>10</sup>2006-2007 Annual Report for Special Education, Office of Dispute Resolution and Administrative Services.

<sup>11</sup>*Id.*

officers since the 2001-02 school year. The reduction in the number of hearing officers and their increased experience at the pre-hearing level are positive outcomes of the increased training requirements required by IDEA 2004 and the implementing regulations effective in October 2006 (34 C.F.R. § 300.511(1) (ii), (iii), (iv)). Hearing officers are receiving more assignments. Reviewing matters more frequently—even if only at the pre-hearing level, hearing officers further enhance those skills addressed in training.

- Even though the number of hearing officers has significantly decreased since 2001-02, a smaller cadre of hearing officers would increase the potential for their hearing more fully adjudicated cases, and thus, improve their ability and skills to manage hearings more effectively, enhance the quality of their decisions, and be even more grounded in the highly complex area of special education law.

## **B. HEARING OFFICER PERFORMANCE – MANAGEMENT OF THE HEARING**

### **☐ Consumer Evaluation**

Evaluations are sent to both parties following the issuance of each decision, whether or not the case went to full hearing or was dismissed because of a mediation agreement, settlement agreement or request for withdrawal.

The director of the Office of Dispute Resolution and Administrative Services (ODR/AS) reviews each evaluation response. The coordinator of due process services checks any concerns against the case record and may call the party(ies) for clarification. The director or coordinator contacts the hearing officer to review issues of concern and as necessary, issues a written cautionary notice to the hearing officer regarding any identified concerns. Additionally, as necessary, the director or coordinator may meet with the hearing officer to review the application of the regulations.

	Reporting Periods		
	2007-2008	2006-2007	2005-2006 <sup>12</sup>
Number of evaluations sent	66	45	69
Number of responses	13	14	20

<sup>12</sup>The reported numbers are not related to the number of hearing requests for the reporting period. Rather, they relate to the decisions received by ODR/AS for the reporting period, which includes those cases carried over from the previous reporting period.

## □ **Trends**

- The number of consumer evaluations (66) increased by 21 this reporting period, reflecting an approximately 47% (66/45) increase over the previous year's total (45). In 2006-07, the number of evaluations (45) represented 65% of the prior year's total (69).
- The responses indicated that the hearing officers remain strongly consistent in the areas of:
  - ✓ Scheduling agreeable dates, times, and locations;
  - ✓ Maintaining a fair and impartial atmosphere;
  - ✓ Being knowledgeable of the requirements of both federal and state laws and regulations; and
  - ✓ Making prompt contact with both the parent and the LEA.
- Areas showing continued improvement:
  - ✓ Informing the parties of the availability of mediation;
  - ✓ Issuing the decision in the required timelines; and
  - ✓ Helping ensure that witnesses needed for the hearing were present.
- Areas of concern are raised with the individual hearing officer and as necessary, notice is sent to the individual regarding any need for improvement or conditional recertification status.

## □ **Evaluation of the Hearing Officers**

On April 1, 2006, ODR/AS established a system for VDOE evaluating each hearing officer's management of pre-hearing conferences and hearings. VDOE developed and disseminated to its hearing officers operational procedures for this system; evaluation forms; and trained 3 of the hearing officers to serve in the role of evaluator. They are required to complete the same training requirements as the other hearing officers; however, while serving as an evaluator, they are not appointed to due process hearings. The evaluators have been assigned to all pending cases and have provided evaluations in all cases where they attended hearings. The evaluations have been positive and have promoted the overall quality of the hearing process. When areas of concern have been observed by the evaluation, the observed concerns are reviewed with the hearing officer. ODR/AS director and coordinator of due process services review all evaluations and follows up, as necessary, with the respective hearing officer.



## C. HEARING OFFICER PERFORMANCE - DECISION

ODR/AS' director and coordinator of due process services review each hearing officer's decision.<sup>13</sup> Additionally, the coordinator reviews and monitors all pre-hearing reports, orders, and correspondences. Either the director or coordinator contacts the hearing officers if errors are identified relative to:

- apparent bias to either party
- correct use of citations
- readability
- correct appeal information
- other errors, such as incorrect names or conflicting data

ODR/AS may not review the decision for errors of law since that is reserved for appellate review. As necessary, the director or coordinator contacts the hearing officer with any concerns and, in certain instances, requires the hearing officer to issue an error correction or a statement of clarification. These procedures are consistent with VDOE's management responsibilities for the due process system. (8 VAC 20-80-76.Q.2)

### ☐ Trends

- Decisions and pre-hearing reports continue to be consistent in:
  - ✓ writing in a manner both the LEA and parents can understand;
  - ✓ advising both parties of the option of mediation;
  - ✓ clearly identifying what was being ordered as a result of the decision; and,
  - ✓ including references to statutes or regulations that support the conclusions reached by the hearing officer.
- Fewer hearing officers erred this reporting period relative to:
  - ✓ advising the parties of their appeal rights; or
  - ✓ documenting that extensions of timelines were in the best interests of the child.
- All hearing officers met the mandated timelines.

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<sup>13</sup> Redacted decisions are posted on the web: <http://www.doe.virginia.gov/VDOE/dueproc>

## **D. HEARING OFFICER – TRAINING**

In addition to the training requirements of the Virginia Supreme Court, the VDOE is responsible for training hearing officers on the legal aspects of special education (laws, regulations, and case law updates) and management of special education hearings. For the 2007-08 school year, hearing officers attended a two-day training event, April 2008, which focused on:

- ✓ IDEA 2004 and IDEA 2006 Regulations
  - case law update
  - IDEA 2004 and 2006 regulatory requirements for hearing officers with special attention to the management of the hearing; resolution sessions; and challenges to the sufficiency of the notice
- ✓ Ethical issues that challenge attorneys as special education hearing officers
- ✓ Strategies in writing decisions and issues of concern for special education hearing officers

From 2001 through 2007, the trainings included aspects of specific disabilities. These one-day sessions have focused on: understanding testing and assessment as applied to children with disabilities; the application of evaluations to eligibility and IEP team decisions; assessments for related services; parental issues; and methodologies. To date, specific disability focus areas include: autism, learning disabilities, ADHD/ADD, and autism spectrum disorders.

In July of 2005, many of the changes mandated by IDEA 2004 became effective. In October of 2006, the implementing federal regulations became effective. During the past two years, the hearing officers have been provided specific training and technical assistance for implementing these statutory and regulatory changes. The resolution period process continues to be a challenge to hearing officers' efforts to manage the timeline for the hearing process. In addition, hearing officers are receiving a greater number of pre-hearing motions in the form of due process notice sufficiency challenges. These motions have required additional pre-hearing conferences among the parties in efforts to provide greater focus to the ultimate hearings held. The year has included ongoing training in order to continue to facilitate acclimation of hearing officers to the statutory and regulatory changes in a variety of contexts.

Supplemental training activities this year have included, among other things:

- ✓ the issuance of VDOE's Technical Assistance Resource Document on Extended School Year Services;

- ✓ the issuance of VDOE's Guidance Document for Special Education Hearing Officers, *Managing the Timeline in Due Process Hearings*;
- ✓ ODR/AS summaries and texts of Virginia and Fourth Circuit Court decisions relative to special education cases for the 2007-08 year.

## E. MANAGING THE 45-DAY MANDATED TIMELINE

Hearing officers are mandated to issue their decisions within 45 calendar days after the local school division receives the request for the hearing. The hearing officer may grant an extension only when it serves the best interest of the child. (8 VAC 20-80 76.K of the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*)

VDOE identified the 45-day timeline as one of its target areas in its Continuous Improvement Monitoring Process Reports to U.S. Department of Education's Office of Special Education Programs (OSEP) (2002 and 2003); Annual Performance Report, 2004; and now the State Performance Plan (Indicator 17). VDOE developed and implemented a process that includes intensive monitoring and tracking of these timelines, training hearing officers on this subject, and issuance of notices to hearing officers who fail to document extensions. VDOE also assured Virginia's Code Commission that these efforts would address the concerns raised during the public hearings of the Administrative Law Advisory Committee. (VDOE Report to the Code Commission and ALAC, November 1, 2002)

### ☐ 45-day timeline extensions with proper notice.

	2007-2008	2006-2007	2005-2006
Total number of due process requests	87	69	98
Number of cases exceeding the 45-day timeline	2 <sup>14</sup>	0 <sup>15</sup>	12

<sup>14</sup>In one case, a hearing officer withdrew from the case based on family obligations and coextensive federal court litigation. This case only exceeded the 45-day timeline by 20 days when a single extension was granted. In a second case, an extension was granted to allow for preparation of the transcript and hearing officer review of the record. This case only exceeded the 45-day timeline by 10 days. In a third case, the 45<sup>th</sup> day fell on a Sunday, so the decision was properly issued on the next business day, and thus is not included in this calculation.

<sup>15</sup>One case was completed on the 47<sup>th</sup> day but the 45<sup>th</sup> day was a Saturday. Since the case concluded on the next business day, this case properly concluded within the 45-day time limit, and thus was not reported here.

## ☐ Trends

• The first level of data evidences a trend of cases not requiring extensions to complete the hearing process:

- ✓ 2005-06: 12 out of 98 hearing requests involved extensions.
- ✓ 2006-07: All cases were completed within the 45-day timeline.
- ✓ 2007-08: 2 out of 89 hearing requests involved extensions.

## ☐ Number of days over the 45-day timeline

	Reporting Periods		
	2007 – 2008	2006 – 2007	2005 - 2006
<b>Total Cases</b>	<b>2</b>	<b>0</b>	<b>12</b>
1 – 30 days	2	0	6
31 – 90 days	0	0	5
91 – 120 days	0	0	0
121 +	0	0	1

- The data indicates a general consistency in the last two reporting periods, with only two cases exceeding the 45-day timeline, and a significant drop in extensions since 2005-06.
- The hearing officers are successfully documenting extensions during this reporting period. The coordinator of due process services employs an electronic tracking log to monitor all timelines and extensions to ensure that the extensions comport with regulatory requirements

## ☐ Parties requesting extensions

	Reporting Periods		
	2007 – 2008	2006 – 2007	2005 - 2006
Parent	2 <sup>16</sup>	1 <sup>17</sup>	14

<sup>16</sup>Two (2) extensions of the 45-day timeline were granted (*see* footnote 14, above). These extensions were carefully documented in the record. Each extension was granted for a very limited period of time based on reasons presented by the party requesting the extension. One extension resulted in a 20-day delay and the other only 10 days.

<sup>17</sup>One extension of the 45-day timeline was granted but the case was completed within the 45-day timeline. This extension was carefully documented by the hearing officer.

	Reporting Periods		
	2007 – 2008	2006 – 2007	2005 - 2006
LEA	0	0	0
Both	1	0	9
Hearing Officer	0	0	1
Child	0	0	0

- Extensions in the current reporting period were necessary to ensure fairness in the hearing process. Hearing officers continue to be reminded that Virginia's regulations governing special education contemplate the grant of extensions only in only the most critical instances.
- Consistent with previous reporting periods, data for 2007-08 indicates that requests for extension are most frequently made by parents. This pattern may be attributable to parents sometimes feeling overwhelmed by the multiple layers of requirements and/or concluding that they should not represent themselves.

## F. IMPLEMENTATION PLANS

Following the completion of each due process hearing, whether or not it goes to full hearing or is settled or dismissed, the school division is required to file with ODR/AS an Implementation Plan that reports how the school division will implement the hearing officer's decision. The LEA has 45 calendar days to submit the implementation plan following the hearing officer's decision. The coordinator of due process services reviews and approves all implementation plans.

### ☐ Implementation Plans

	Reporting Periods		
	2007 – 2008	2006 – 2007	2005 – 2006
Number of plans required	<b>87</b>	<b>69</b>	<b>98</b>
Received	73	52	66
Approved	73	52	66
Pending review	0	0	0
Pending receipt/review	14	17 [0*]	32 [0*]
Total pending closure	14	17 [0*]	32 [0*]

\*As of 6/30/08

## ☐ Trends

- Continuing the trend of prior reporting periods, all implementation plans submitted to ODR/AS were approved. For this reporting period, approximately 84% of the total number of plans required (73/87) were received, compared to about 75% of the number of plans required (52/69) in 2006-07. Both of these percentages are higher than the 67% (66/98) received in 2005-06.

## G. FOLLOW-UP SYSTEM FOR IMPLEMENTATION PLANS

VDOE identified as a target area in its Continuous Improvement Monitoring Process (CIMP) follow-up with school divisions to ensure implementation of the plans submitted by LEAs to comport with the hearing officers' decisions and approved by VDOE. This meant developing a system to review all implementation plans, to require documentation, and/or to initiate an on-site review. In VDOE's CIMP reports to OSEP in June and November 2003, and 2004 Annual Performance Report, ODR/AS documented its system for meeting this responsibility, which was implemented on July 1, 2003. ODR/AS began with the 2002-03 Implementation Plans. ODR/AS continues to report its efforts in its State Performance Plan at Indicator 15.

## ☐ Follow-Up System

	Reporting Periods		
	2007 – 2008	2006 – 2007	2005 – 2006
Number of due process cases	87	69	98
Number of plans requested and received	73	52	66
Number of plans pending receipt	14	17	32
Follow-up Implementation Plans reviewed	73	52	66
✓ not requiring additional action	36	24	32
✓ requiring follow-up activity	37	28	33
• additional documentation received/approved	23	28	33
IPs pending review	0	0	0

## ☐ Trends

- Again this year, no reviews of implementation plans were pending. About 49% of all implementation plans (36/73) required no additional action after follow-up

review, while slightly more than half (37/73) required further action. In 23 these latter cases, additional documentation was received and ultimately approved.

## H. INITIATIVES

- ODR/AS completed its guidance document for hearing officers on the subject of the 45-day timeline (*see* D—Hearing Officer: Training, above). This project was identified in VDOE’s 2003 CIMP Report to OSEP; in VDOE’s 2002 report to Virginia’s Code Commission; in VDOE’s 2004 Annual Performance Report, and the current State Performance Plan (Indicator 17).
    - The office’s Work Plan included the following components:
      - ✓ reviewing information from other SEAs regarding policies, procedures, and practices;<sup>18</sup>
      - ✓ reviewing three years of data to determine what patterns may exist relative to such areas as reasons for the extensions and hearing officers granting the extensions;
      - ✓ reviewing applicable case law on this subject; and developing the guidance document.
  - In VDOE’s 2004 Annual Performance Report to OSEP, VDOE reported a project target and activity that focuses on the development of a guidance document, Alternative Dispute Resolution Guidance Document. This project was initiated during this reporting period. VDOE also developed this project in response to the concerns raised during the public hearing held by the Virginia Code Commission’s Administrative Law Advisory Committee. The concerns related to the parents’ need for understanding the legal intricacies of the process when representing themselves in due process hearings. Without this understanding, parents reported that they remained at a disadvantage when the school board attorney represents the LEA’s interests, thus eliminating a level playing field. The document will also provide information and guidance on conflict resolution, such as mediation and the complaints system.
- This document was completed and distributed to the field in August 2008.
- In response to the above-referenced public hearing, ODR/AS developed and posted on its web site, a list of legal and advocacy services for parents and students with disabilities, with a brief summary description of each of the services

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<sup>18</sup>The Mid-South Regional Resource Center was instrumental in obtaining this information from other SEAs for VDOE.

at <http://www.doe.virginia.gov/VDOE/dueproc>. This document was updated during 2007-08.

- ☐ ODR/AS received a work group report during 2007-08 addressing alternative methods of conducting resolution sessions. Based on this report, ODR/AS will develop a guidance document on this topic for school division personnel.

Anticipated completion date: January 2009.

- ☐ Based on the IDEA 2004 mandate for Resolution Sessions, ODR/AS has included a tracking system for resolution sessions held and disputes resolved through resolution agreements.
- ☐ ODR/AS will provide the hearing officers with guidance documents and training on the updated state regulations when they are implemented.



## PART II     MEDIATION SERVICES

- Baseline Data
- Evaluations
  - ✓ System
  - ✓ Consumer
  - ✓ Mediators
- Training
- ODR/AS Initiatives

Mediation services are available to parents and school administrators to help them negotiate issues that divide them regarding the identification, testing or provision of services to school age students who are thought to need help in order to have access to or to benefit from the curriculum. The sooner mediation is sought; the more likely it is to be successful. In 2007-08, it helped people to a successful outcome in 80% of the times when it was sought. Changing the format and the dynamics of a meeting is likely to change its outcome. Mediation is a good option to bear in mind when the settlement period is invoked by a request for hearing. There is material descriptive of the mediation process on our web site at <http://www.doe.virginia.gov/VDOE/dueproc>.

### A. BASELINE DATA

VDOE's Special Education Mediation Services joined the ODR/AS staff on July 1, 2003. This unit includes: 8 mediators; ODR/AS director, coordinator of mediation services, and administrative assistant. The current system for maintaining the baseline data was developed and implemented during the 2003-2004 reporting period.

#### ☐ Disposition of Requests

	Reporting Periods			
	2007 – 2008	2006 – 2007	2005 – 2006	2004-2005
<b>Number of requests</b>	<b>138</b>	<b>129</b>	<b>125</b>	<b>133</b>
• resolved	87	81	74	79
• partially resolved	2	2	1	5
• unresolved	22	18	25	27
• withdrawn	18	17	14	21
• pending	9	11	11	1

☐ **Requests Involving Due Process**

	Reporting Periods			
	2007-08	2006 – 2007	2005 – 2006	2004 - 2005
<b>Number of requests</b>	<b>138</b>	<b>129</b>	<b>125</b>	<b>133</b>
<b>Number involved in DP</b>	<b>32</b>	<b>21</b>	<b>24</b>	<b>29</b>
✓ resolved	18	6	13	17
✓ partially resolved	0	1	1	0
✓ unresolved	6	6	7	7
✓ withdrawn	8	7	3	5
✓ pending	0	1	0	0

☐ **Four-Year Review of Mediation Requests**

	2007-2008	2006-2007	2005-2006	2004-2005
Mediations requested	138	129	125	133

☐ **Issues**

	Reporting Periods			
	2007 – 2008	2006 – 2007	2005 – 2006	2004-2005
<b>Total number of issues</b>	<b>235</b>	<b>202</b>	<b>206</b>	<b>195</b>
IEP	<b>163</b>	<b>135</b>	<b>140</b>	<b>131</b>
✓ sufficiency of services	65	48	50	59
✓ type of services	39	37	44	38
✓ placement	52	43	37	30
✓ goals	7	7	9	4
Staffing	8	17	23	31
Evaluation & Disability	19	24	24	17
Financial responsibility*	22	17	8	11
Discipline	8	7	9	3
Transportation	6	2	2	1
ESY	9	Not collected	Not collected	Not collected

\* Involves disputes over financial responsibility for costs associated with a program that the parent has selected.

☐ **Requests by Region:**

<b>Regions</b>	<b>2007-08</b>	<b>2006 - 2007</b>	<b>2005 - 2006</b>	<b>2004 - 2005</b>	<b>2003 – 2004</b>
<b>Region I</b>	14	9	26	20	12
<b>Region II</b>	40	12	23	16	24
<b>Region III</b>	9	15	13	17	12
<b>Region IV</b>	51	62	44	53	61
<b>Region V</b>	17	17	10	14	12
<b>Region VI</b>	4	8	3	7	8
<b>Region VII</b>	2	1	3	5	3
<b>Region VIII</b>	1	5	3	1	3

☐ **Trends**

- The total number of requests for mediation (138) is slightly higher than the total for the previous reporting period (129). Eighty percent of requests in which parties actually met for mediation (89/111) were partially or completely resolved.
- Several superintendents' regions witnessed significant changes in the number of requests for mediation during this reporting period.
  - Region I, (Central Virginia), witnessed an approximately 50 percent increase in mediation requests (14) when compared to the previous year (9 in 2006-07). Demonstrating the most dramatic increase in mediation requests was Region II (Tidewater and Eastern Shore), where the number of mediation requests (40) was more than three times that reported in 2006-07 (12).
- In contrast, four superintendents' regions experienced decreases in mediation requests.
  - While Region IV (Northern Virginia) claimed the highest number of total mediation requests for the fourth consecutive year, this total reflected an 18 percent decline (51 in this reporting period; 62 in 2006-07). Similarly, Region VI (Cities of Danville, Martinsville, Roanoke, and Salem, and surrounding counties) halved its number of mediation requests, receiving 4 this year, and 8 in 2006-07, while requests in Region III (Northern Neck) fell 40 percent, from 15 in 2006-07 to 9 in 2007-08. With the fewest number of mediation requests (only 1) among all superintendents' regions, Region VIII (South-Central Virginia) experienced an 80 percent decline from the previous reporting period (5 in 2006-07).

- While increased awareness of the mediation option may augment the numbers of requests in some regions, no specific factors can be cited as contributing to the variations in the total numbers of mediation requests in the respective superintendents' regions.
- The total number of mediation requests made during due process (32) increased in this reporting period, comprising 23% of all mediation requests (32/138) for this reporting period. Of these requests, 75% (18/24) were successfully resolved.
- The total number of issues for this reporting period—235—is about 16% higher than the 202 reported in 2006-07 and 14% higher than the 2006 reported in 2005-06. For the fourth consecutive year, the IEP issue category claimed the highest portion of mediation issues, accounting for about 69% (163/235) of the total number of issues. This percentage is consistent with those reporting in previous years: 66% in 2006-07; approximately 68% (140 of 206) in 2005-06, and about 67% (131 of 195) in 2004-05. The financial responsibility category, which includes disputes over tuition reimbursement for private placements and costs associated with other programs, followed as a distant second, accounting for about 9% (22/235) of total issues in this reporting period. The evaluation and disability category moved to third place, with 7% of total issues (17/235). For the first time, data was collected for requests involving extended school year (ESY), which issue accounted for 9 of 235 total issues (3%).
- The probability of reaching an agreement through mediation is approximately 80%, far surpassing the 30% agreement rate in unassisted resolution sessions.
- There continues to be a large representation in the number of cases in which autism is a pivotal consideration. There has been a corresponding decrease in the age at which student's services have come before a mediator for assistance in negotiation.
- Some mediators report that schools understand and make better use of mediation and come to the table better prepared to cooperatively participate in negotiations.
- Mediators report that attorneys are more frequently attending mediations or acting in an advisory capacity to parties involved in mediation.

## **B. EVALUATIONS**

### **☐ Consumer Evaluations**

People who participate in mediation are supplied with a form to complete to provide the Coordinator with a written evaluation with any comments they wish to make to capture their experience in the mediation session. 276 consumer evaluations were distributed this year. The Coordinator reviews them for issues requiring address and calls for more information if necessary. People are encouraged at any time to call or write the Coordinator with their experiences or to approach him at a meeting.

Some sample comments from participants:

Parent: “The mediation process has been most helpful in getting us discussing issues and in understanding each other’s perspectives. The mediator did an excellent job and was very personable.”

Administrator: “The mediator did a great job in a situation involving both an attorney and an advocate. We were able to reach an agreement.”

Parent: “The mediator was very knowledgeable and fair and worked diligently to help us resolve our issue. We hope that we never have to use mediation again but, if we do, we feel good about the process.”

Administrator: “Very straightforward and non-partisan. Made every reasonable attempt at consensus.”

Parent: “I enjoyed the mediation process. The mediator did a fabulous job helping parties come to a resolution.”

Administrator: “This was my first experience at mediation. Through a lengthy session, I was impressed with the mediator’s professional manner and expertise in negotiating a settlement that met the needs of the child.”

## **□ Evaluation of Mediators**

Evaluations extend beyond these informal reports to observations of mediators at work and formal assessments in writing, which are discussed in supervision. The objective in a progressive assessment process is to call attention to the growing edges of the mediator’s practice as they continue to develop their understanding and skills in the service of assisting people in negotiating important issues.

## **C. TRAINING**

Due to state budget constraints, mediators received eight hours of training sponsored by ODR/AS this year. Mediators supplemented this through other sources including state and national conferences and specialized reading.

## **D. TRAINING PROVIDED TO CONSTITUENTS**

The Coordinator conducted workshops on mediating special education issues to the Mid-South Regional Resource Center, the Endependence Group, the Children’s Law Clinic at the University of Richmond, and Prince William administrators. He presented a workshop on negotiations for new special education teachers and supervisors at the Virginia Transition

Forum. He provided familiarization training on the proposed state regulations at a public session in Chesterfield.

## **E. In Appreciation**

Dr. Jerry Minskoff retired from actively practicing mediation in special education issues this year. Dr. Minskoff served a long and distinguished career as professor of special education at James Madison University. He has been a tireless advocate for special education issues and was instrumental in promoting the development of mediation in Virginia to resolve differences over educational planning for students with special needs. He has served as a board member for the Learning Disabilities Association and has often been a national voice for students with special needs. Dr. Minskoff currently serves as a mediator *emeritus* to VDOE's special education mediation services.

Nancy Siford has long served as a trainer, consultant and mentor to mediators in Virginia. She joined the original cadre of mediators providing mediation services for the State Special Education Mediation Service and has served with distinction. She was recruited to serve the Supreme Court mediation program which provides training and certification for mediators who handle court-referred cases in Virginia.

The contributions of these two fine people to VDOE's mediation system will be long remembered.

## **F. INITIATIVES**

Two new mediators were selected: Samuel Jackson and Russell Harris. Sam has been a practicing mediator for thirteen years. He serves as an adjunct professor at George Mason and Georgetown law schools. He has worked with family, community and business disputes. Russell has also been a practicing mediator for thirteen years. He is the Ombudsman for Chesterfield County and has served as mediator and arbitrator for several consumer and dispute resolution organizations.

- The Alternative Dispute Resolution document (*Parents' Guide to Special Education Dispute Resolution*) was completed and distributed to the field in August 2008.
- A work group met several times to develop recommendations for the best use of resolution sessions. Expected completion of this project: January 2009.
- The Coordinator wrote an article on mediating special education issues for the Virginia Supreme Court Newsletter to be published in the third quarter of 2008.
- The SSEMS guidelines for mediation are in the process of being rewritten and will be published in the fall 2008.

## PART III COMPLAINTS SYSTEM

- Baseline Data
- Implementation System for CAPS
- ODR/AS Initiatives

### A. BASELINE DATA

#### ☐ Number of Complaints

	Reporting Periods		
	2007 – 2008	2006 – 2007	2005 – 2006
<b>Number of Complaints</b>	<b>138</b>	<b>115</b>	<b>132</b>
• resolved through mediation or otherwise settlement agreement	15	14 <sup>19</sup>	19 <sup>20</sup>
• withdrawn	18	15 <sup>21</sup>	18 <sup>22</sup>
• dismissed	1	2	1
• findings/decisions issued	84	84 <sup>23</sup>	94 <sup>24</sup>
• pending as of 6/30/08	20	0	0
Number exceeding the 60- day timeline without the mandated extension	0	0	0

#### ☐ Five-Year Review of Complaints Received

Fiscal Year	2007-2008	2006-2007	2005-2006	2004-2005	2003-2004
Total Number of Complaints	138	115	132	167	169

<sup>19</sup>One (1) case was resolved during the 2007-2008 reporting period.

<sup>20</sup>Two (2) cases were resolved during the 2006-2007 reporting period.

<sup>21</sup>Three (3) cases were withdrawn during the 2007-2008 reporting period.

<sup>22</sup>Two (2) cases were withdrawn during the 2006-2007 reporting period.

<sup>23</sup>17 decisions were rendered during the 2007-2008 reporting period.

<sup>24</sup>19 decisions were rendered during the 2006-2007 reporting period.

## ☐ Findings/Decisions

	Reporting Periods		
	2007 – 2008	2006 – 2007	2005 – 2006
Number of decisions issued	84*	67**	75***
Number of issues	265	217	187
Number of issues in compliance	168	164	138
Number of issues in noncompliance	97	53	49

\*As of 6/30/08

\*\*As of 6/30/07

\*\*\*As of 6/30/06

## ☐ Decisions Appealed

	Reporting Periods		
	2007 – 2008	2006 – 2007	2005 – 2006
Number of decisions issued	84	67	75
<b># of Decisions Appealed</b>	<b>18*</b>	<b>24**</b>	<b>32***</b>
• Findings Affirmed	14	18	28
• Findings Reversed	1	0	0
• Findings Remanded	3	3	1
• Findings Split	0	1	3
• affirmed issues	0	9	17
• reversed issues	0	1	8
• remanded issues	0	0	0
• dismissed issues	0	0	0
• Appeals Withdrawn	0	2	0
• Appeal Decisions Pending as of 6/30/08	0	0	0

\*7 appeals were based on findings issued in 2006/2007

\*\*8 appeals were based on findings issued in 2005/2006

\*\*\*15 appeals were based on findings issued in 2004/2005



☐ **Issues/Sub-issues**

<b>Issues/Sub-issues</b>	<b>Reporting Period</b>		
	<b>2007 – 2008</b>		
	<b>#Issues</b>	<b>C*</b>	<b>NC*</b>
<b>IEP</b>	<b>126</b>	<b>80</b>	<b>46</b>
Implementation	92	65	27
Development, Review & Revision	24	13	11
Provision of Progress Reports	9	1	8
Provision of Services	1	1	0
<b>IEP Meetings</b>	<b>35</b>	<b>19</b>	<b>16</b>
Team Composition	7	4	3
Parental Participation	8	7	1
Parent Request for Meeting	1	1	0
Copy of IEP to Necessary Staff	3	1	2
Meeting Procedures	3	2	1
Notice	13	4	9
<b>FAPE</b>	<b>6</b>	<b>5</b>	<b>1</b>
Disability Harassment	2	1	1
ESY	3	3	0
Participation in Extra Curricular Activities	1	1	0
<b>Procedural Safeguards</b>	<b>21</b>	<b>13</b>	<b>8</b>
IEE	2	1	1
Written Prior Notice	14	9	5
Notice of Procedural Safeguards	5	3	2
<b>LRE</b>	<b>3</b>	<b>3</b>	<b>0</b>
Least Restrictive Environment	3	3	0
<b>Discipline</b>	<b>18</b>	<b>7</b>	<b>11</b>
Disciplinary Procedures	4	2	2
MDR	5	3	2
FBA/BIP	1	0	1
Services During Removal	6	1	5
Child Not Yet Eligible	2	1	1
<b>Eligibility/Evaluation/ Reevaluation</b>	<b>21</b>	<b>16</b>	<b>5</b>
Eligibility Procedures	3	2	1
Evaluation/Reevaluation Procedures	12	9	3
Parental Request for Evaluation	1	1	0
Timelines	5	4	1
<b>Child Find</b>	<b>3</b>	<b>3</b>	<b>0</b>
Child Study Procedures	3	3	0

Issues/Sub-issues	Reporting Period		
	2007 – 2008		
	#Issues	C*	NC*
<b>Program Standards</b>	<b>4</b>	<b>4</b>	<b>0</b>
Qualified Personnel	4	4	0
<b>Placement</b>	<b>3</b>	<b>3</b>	<b>0</b>
Change in Placement	3	3	0
<b>Records</b>	<b>13</b>	<b>8</b>	<b>5</b>
Access	8	6	2
Confidentiality	4	2	2
Management	1	0	1
<b>Other</b>	<b>12</b>	<b>7</b>	<b>5</b>
Summary of Progress Report	1	0	1
Transfer Student Procedures	2	2	0
Complaint Resolution Procedures	3	0	3
Local Advisory Committee Procedures	6	5	1
<b>TOTALS</b>	<b>265</b>	<b>168</b>	<b>97</b>

\*denotes that the LEA was found to be in compliance “C” or non-compliance “NC”.

☐ **Issues Summary: Three-Year Period**

	Reporting Period 2007-2008			Reporting Period 2006-2007			Reporting Period 2005-2006		
Issue Category	Total Issues	C	NC	Total Issues	C	NC	Total Issues	C	NC
IEP	126	80	46	90	66	24	71	51	20
IEP Meetings	35	19	16	25	21	4	24	17	7
FAPE	6	5	1	8	7	1	10	10	0
Procedural Safeguards	21	13	8	20	15	5	24	20	4
LRE	3	3	0	4	4	0	5	4	1
Discipline	18	7	11	10	9	1	6	5	1
Eligibility/Evaluation/ Reevaluation	21	16	5	25	18	7	25	20	5
Child Find	3	3	0	5	4	1	1	1	0
Program Standards	4	4	0	4	1	3	2	2	0
Placement	3	3	0	2	2	3	0	0	0
Records	13	8	5	17	14	4	5	2	3
Other	12	7	5	7	3	4	14	6	8
<b>TOTALS</b>	<b>265</b>	<b>168</b>	<b>97</b>	<b>217</b>	<b>164</b>	<b>53</b>	<b>187</b>	<b>138</b>	<b>49</b>

☐ **Trends**

- The number of complaints for this reporting period (138) is 23 greater than last year (115), and is slightly lower (6) than the average of the total number of cases over the last 5 years (721 total cases, averaging approximately 144 cases per year).
  - Although the number of mediation requests was slightly higher this year (138 in 2007-08, compared to 129 in 2006-07), we cannot conclude how mediation may have affected the number of complaints. There are no clearly identifiable factors accounting for this increase.
  - The 2006 implementing regulations eliminated the three-year filing period for complaints addressing continuing violations or requests for compensatory services, thus limiting all complaints to violations alleged to have occurred within one year prior to receipt of the complaint (34 C.F.R. § 300.153). However, because there is no data indicating the numbers of

complaints received that were returned for insufficiencies in 2007-08 or previous years (or the reasons therefore—such as time-barred issues), or the numbers of these complaints that were subsequently submitted successfully, we cannot conclude that the one-year time-bar affected—positively or negatively—the number of complaints for this reporting period.

- The number of complaint issues (265) is 48 greater than that reported for 2006-07 (217) and 68 greater than that for 2005-06 (187). Although the number of total complaints increased in 2007-08, the increase in the number of complaint issues is nonetheless significant, as the regulations require the SEA to address each issue with findings.
- The number of decisions issued—84—surpassed the number of decisions issued for the previous reporting period (67) by 17.
- For the second consecutive year, the total number of decisions that were appealed decreased. Similarly, the percentage of appeals dropped, to 21% (18/84), from 35% (24 of 67) in 2006-07, and 42% (32/75) in 2005-06.
- Nearly 40% (7/18) of the decisions appealed in 2007-08 were based on findings issued in 2006-07, while one-third (8/24) of the decisions appealed in the prior reporting period were based on findings issued in 2005-06.
- For the fourth consecutive year, the IEP issue category claimed the highest portion of complaint issues, comprising approximately 48%—or nearly half—(126/265) of the total number of issues. This percentage reflects a moderate increase from approximately 41% (90/217) in 2006-07, and 38% (71/187) in 2005-06. The IEP meetings category followed, accounting for slightly more than 13% (35/265) of total complaint issues, with the Procedural Safeguards and Eligibility/Evaluations/Reevaluation issue categories each supplying about 8% (21/265) of complaint issues.
- Sub-issue areas with highest numbers of noncompliance findings follows:
  - ✓ IEP implementation (27 of 97 total noncompliance findings)
  - ✓ IEP development, review & revision (11 of 97)
  - ✓ IEP meeting notice (9 of 97)
  - ✓ Provision of progress reports (8 of 97)
- Issue categories that demonstrated improvement in compliance (as a percentage of complaints submitted in the particular category) since the last reporting period follow:
  - ✓ Program standards (100%; 25% in 2006-07)
  - ✓ Child Find (100%; 80% in 2006-07)
  - ✓ Other (58%; 43% in 2006-07)
  - ✓ Eligibility/Evaluation/Reevaluation (76%; 72% in 2006-07)

- In contrast, issue categories that declined in compliance since the last reporting period follow:
  - ✓ Discipline (39%; 90% in 2006-07)
  - ✓ IEP meetings (54%; 84% in 2006-07)
  - ✓ Records (62%; 82% in 2006-07)
  - ✓ Procedural Safeguards (62%; 75% in 2006-07)
  - ✓ IEP (64%; 73% in 2006-07)
  - ✓ FAPE (83%; 88% in 2006-07)
- Two issue categories—LRE and Placement—maintained their 100% compliance rates from the previous reporting period.
- Data reflects no clear nexus between revised regulatory requirements and any significant increase or decrease in various complaint totals or findings.

## **B. IMPLEMENTATION SYSTEM FOR CORRECTIVE ACTION PLANS**

VDOE identified as one of its target areas in its Continuous Improvement Monitoring Process and Annual Performance Report to follow up with school divisions to ensure timely correction of non-compliances as required by complaint decisions. This meant developing a system to review all Corrective Action Plans (CAPs) that had been approved by ODR/AS, and as necessary, require documentation and/or initiate an on-site review to ensure complete implementation. In VDOE's CIMP reports to OSEP in June and November 2003, and 2004 Annual Performance Report, ODR/AS evidenced its system for meeting this responsibility, which was developed and implemented on July 1, 2003. ODR/AS began with the 2001-02 school year CAPs. This element is now included in the State Performance Plan (Indicator 15).

☐ **Corrective Action Plan Implementation**

<b>Fiscal Year</b>	<b>Number of Decisions Issued</b>	<b>Pending Decision</b>	<b>CAPs Issued</b>	<b>Reviewed for Full Implementation and Closed<sup>25</sup></b>	<b>Pending Review</b>
<b>2007-08</b>	84	20	42*	0	42
<b>2006-07</b>	84	0	46	52	0
<b>2005-06</b>	94	0	38	47	0
<b>2004-05</b>	119	0	55	56	0
<b>2003-04</b>	113	0	52	58	0

\* As of 6/30/08

### **C. INITIATIVES**

- ODR/AS continued to develop a *Parents' Guide to Special Education Dispute Resolution* for parents and other consumers. One of the document's sections focuses on the complaints system. The Guide was released in August 2008.
- ODR/AS' complaints specialists participated in a variety of trainings on special education law and regulatory matters. Each specialist is assigned to two regions and serves on VDOE's technical assistance team for those particular regions. The specialist also attends regional meetings of the special education directors in the assigned region.
- ODR/AS staff, particularly the complaints staff, work closely with the VDOE parent ombudsman and parent resource specialist (both with the Office of Student Services) to provide information and guidance to the Parent Resource Centers and parents on dispute resolution matters. The ombudsman position began in 2003-04 in response to the Code Commission's 2001 recommendation to VDOE to create such a position to assist parents with special education matters and understanding of dispute resolution options.
- Complaints staff assisted with various trainings and public hearings regarding the new IDEA federal regulations and revision of Virginia's regulations governing special education.
- ODR/AS' complaints specialists also provided training sessions for school divisions, special educators, and others to address a variety of special education issues, including transition services, discipline, and transportation.

<sup>25</sup>This includes the review of ODRAS accepted self-corrective actions which were submitted by the LEA with their response to the complaint.

## **PART IV ADMINISTRATIVE SERVICES**

- O Annual Plans
- O Inquiries
- O Freedom of Information Act Requests
- O Initiatives

The Office of Dispute Resolution and Administrative Services is also responsible for:

- coordinating the revision of Virginia’s special education regulations, including ensuring compliance with all requirements of Virginia’s “Administrative Process Act.” (*Code of Virginia* § 2.2-400 *et seq.*) Administrative Services staff is responsible for this function.
- training initiatives relative to IDEA ’04 and its federal implementing regulations, and VDOE’s revision of the Virginia regulations governing special education. Administrative Services staff is responsible for coordinating this function.
- coordinating the Annual Plan process for the local school divisions and state-operated programs. The coordinator of administrative services oversees the annual plan system, and provides technical assistance and trainings regarding its components.
- coordinating the process for developing and posting responses to the Frequently Asked Questions (FAQs), reflecting questions generated by the field. The coordinator of administrative services oversees this operation.
- responding to written and electronic inquiries involving the application of federal and state regulations governing special education. The ODR/AS staff is responsible for responding to inquiries.
- responding to Freedom of Information Act (FOIA) requests relative to the dispute resolution systems. The coordinator of due process services coordinates the responses to FOIA requests.

### **☐ Annual Plans**

Pursuant to the *Code of Virginia*, § 22.1-215, each of the 150 Virginia school divisions and state-operated programs shall submit to VDOE for approval a plan to provide special education services to identified children with disabilities within its jurisdiction. This plan shall not be submitted more than annually unless changes to the plan are required by federal or state law or regulation. This plan must be received by VDOE, in substantially approvable form, no later than July 1 of each year.

During the 2007-2008 school year, ODR/AS provided training and technical assistance, as necessary, to assist school divisions and state-operated programs in the development and submission of their annual plan, including the submission of their electronic application for federal funding via the Online Management of Education Grant Awards (OMEGA) system. All annual plans were received, reviewed, and approved by July 1, 2008.

## **☐ The IDEA 2004 and the Regulatory Process**

ODR/AS is responsible for coordinating the revision of the “Regulations Governing Special Education for Children with Disabilities in Virginia,” Virginia’s special education regulations. A framework for this process was developed during the 2005-2006 school year, and multiple training opportunities regarding this process have been provided to parents, advocates, LEA personnel, and other consumers. In accordance with the regulations revision framework, between July 1, 2007 and June 30, 2008, ODR/AS engaged in a number of activities, including the following:

- With guidance from the Board of Education, and the Office of the Attorney General, worked collaboratively with staff throughout VDOE to develop proposed regulatory language. The proposed special education regulations were reviewed and approved by the Virginia Board of Education during its September 26, 2007 meeting;
- Developed and disseminated copies of the “Town Hall” forms, which detailed the proposed changes to Virginia’s special education regulations, and outlined the rationale for each proposed change;
- Ensured review of the proposed regulations by the Executive Branch, including the Department of Planning and Budget, who issued an Economic Impact Analysis; the Secretary of Education; and the Office of the Governor. Throughout this review process, ODR/AS staff met with representatives from each of these offices, as appropriate, to provide additional information and clarification regarding the proposed changes and the ultimate impact for parents, school divisions, and the Commonwealth;
- Following the completion of the Executive Branch approval process, worked with the staff of the “Virginia Register of Regulations” to ensure publication of the proposed regulations on April 28, 2008. The publication of the regulations in the “Virginia Register of Regulations” initiated a 60-day public comment period, which concluded on June 30, 2008;
- Planned and coordinated the logistics for nine public hearings that were convened around the state during the public comment period. Information regarding these hearings was posted to VDOE’s web site, published in a Superintendent’s Memorandum, and was widely distributed to constituency groups;



- Served as staff liaisons to the State Special Education Advisory Committee (SSEAC), and its Policy and Regulations sub-committee, during three meetings at which the proposed regulations were reviewed and the SSEAC drafted and finalized its public comments;
- Received, reviewed, and processed approximately 38,743 individual comments regarding the proposed regulations from approximately 2,233 individual submissions, which were received between the close of the NOIRA public comment period on February 23, 2008 and June 30, 2008. These comments, which included those made during the public hearings, will be summarized, and a copy of the summary will be provided to each individual or group who submitted public comments during the regulations revision process;
- In addition to making the proposed special education regulations available on-line, distributed approximately 400 hard-copies of the proposed state special education regulations to a variety of constituency groups; and
- Updated, as appropriate, the dedicated website for the regulations revisions process at <http://www.doe.virginia.gov/VDOE/dueproc/regulationsCWD.html> with technical assistance documents to ensure that all constituency groups understood the requirements of the Administrative Process Act, and the current status of the regulations revision process.

During this reporting period, ODR/AS also conducted approximately 38 trainings for multiple constituency groups, across the state, regarding regulatory matters, including the regulations revision process and the proposed regulations. For five of these trainings, ODR/AS partnered with Virginia's Parent Education Advocacy Training Center (PEATC) to provide state-wide opportunities for parents to receive information regarding the proposed changes to Virginia's special education regulations, and how parents could participate in the public comment process.

## ☐ Frequently Asked Questions

The revision of Virginia's special education regulations to comply with IDEA, and its federal implementing regulations, resulted in a reprioritizing of this activity. ODR/AS' goal is to ensure timely posting of FAQs on its web site once the state regulations revision process is complete.

## ☐ Inquiries

Fiscal Year	2007-08	2006-2007	2005-2006	2004-2005	2003-2004
Number of Requests	251	174	236	158	146

Inquiries are requests for interpretation or application of regulations that are not related to a specific complaint, mediation, or due process case. As the data indicates, there

has been a significant increase in these requests. This is attributable, in part, to questions about the application of the new federal special education regulations to special education in Virginia, and the extreme interest in issues relative to the regulations revision process.

### ☐ **Freedom of Information Act Requests**

Fiscal Year	2007-08	2006-2007	2005-2006	2004-2005
Number of Requests	20	14	29	28

### ☐ **Initiatives**

Administrative Services will be responsible for the following activities during the 2008-09 year:

- In compliance with Virginia's Administrative Process Act, continued coordination of the revision of Virginia's regulations governing special education, including the following:
  - Completing and disseminating a summary of all comments received regarding the proposed special education regulations, and VDOE's response to the comments, to each individual or group who submitted public comment;
  - Drafting revisions to the proposed regulations, in accordance with guidance from the Board of Education, for review and approval;
  - Assisting, as appropriate, the Virginia Board of Education, and staff from the Department of Planning and Budget, the Office of the Secretary of Education, and the Office of the Governor, as the final regulations are reviewed, revised, and approved for publication in the "Virginia Register of Regulations;"
  - Updating and disseminating information regarding the regulations revision process; and
  - Once finalized, ensuring the dissemination of the new state special education regulations to all constituency groups, including through posting the information to ODR/AS' web site, distribution at trainings, and direct mail of the information, upon request. ODR/AS will also ensure that the regulations are translated, as appropriate.

It is anticipated that the final special education regulations and accompanying "Town Hall" forms will be presented to the Board of Education for action at its September 25, 2008 meeting, and that the regulations will become effective in Spring 2009;

- Developing technical assistance documents regarding Virginia's new special education regulations and providing training opportunities state-wide to review and clarify their new requirements; and
- Coordination of the Annual Plan process to ensure compliance with the IDEA, its federal implementing regulations, and Virginia's special education regulations, including via the development of a template to ensure that local policies and procedures regarding special education comply with state and federal mandates.

## **APPENDIX A**

### **Dispute Resolution Activities by LEA 2007-2008**

- c:
- VDOE's management team responsible for the State Performance Plan
  - VDOE staff in the Division of Special Education and Student Services
  - VDOE hearing officers and mediators
  - Virginia Supreme Court, Office of the Executive Secretary
  - State Special Education Advisory Committee
  - Directors of Special Education

**Appendix A**  
**Dispute Resolution Activities by LEA**  
**2007-08**

<b>SCHOOL DIVISION</b>	<b>SPED PUPILS AGES 0-22+</b>	<b>TOTAL PUPILS</b>	<b>Due Process Hearings Filed</b>	<b>SPED Complaints Filed</b>	<b>Mediation Cases</b>
Accomack	765	5,206	0	2	0
Albemarle	1,705	12,794	1	1	0
Alexandria City	1,780	10,570	0	0	0
Alleghany	522	2,914	0	0	0
Amelia	214	1,880	0	0	0
Amherst	561	4,764	0	0	0
Appomattox	338	2,317	0	0	0
Arlington	2,830	18,736	2	1	3
Augusta	1,490	11,040	0	1	1
Bath	99	747	0	0	0
Bedford	1,128	11,032	0	1	0
Bland	137	906	0	0	0
Botetourt	785	5,000	0	0	1
Bristol City	369	2,362	0	0	0
Brunswick	282	2,256	0	0	0
Buchanan	693	3,475	0	1	0
Buckingham	258	2,106	0	0	0
Buena Vista City	146	1,150	0	0	1
Campbell	984	8,813	0	0	0
Caroline	601	4,171	0	0	1
Carroll	599	4,086	0	0	0
Charles City County	136	865	0	1	0
Charlotte	323	2,195	0	0	0
Charlottesville City	638	4,084	1	0	2
Chesapeake City	7,028	40,003	4	6	5
Chesterfield	7,970	58,969	4	6	0
Clarke	163	2,214	1	0	0
Colonial Beach	92	579	0	0	0
Colonial Heights City	447	2,922	1	0	0
Covington City	177	950	0	0	0
Craig	113	749	0	0	0

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Culpeper	775	7,482	0	0	0
Cumberland	185	1,545	0	2	0
Danville City	1,031	6,823	0	0	0
Dickenson	444	2,533	1	0	0
Dinwiddie	667	4,687	0	0	0
Essex	232	1,661	0	0	0
Fairfax	23,742	165,734	18	22	18
Falls Church City	254	1,936	0	0	0
Fauquier	1,259	11,280	0	0	2
Floyd	328	2,059	0	0	0
Fluvanna	532	3,765	0	0	1
Franklin	1,325	7,529	0	1	0
Franklin City	229	1,362	0	1	0
Frederick	1,666	12,995	1	0	3
Fredericksburg City	313	2,760	0	1	1
Galax City	133	1,368	0	0	0
Giles	357	2,547	0	0	0
Gloucester	737	6,085	0	1	1
Goochland	364	2,411	0	1	0
Grayson	281	2,109	0	0	0
Greene	470	2,824	2	0	0
Greensville	386	2,642	0	0	0
Halifax	1,140	6,101	0	0	0
Hampton City	3,194	22,331	1	0	3
Hanover	2,829	19,100	0	0	1
Harrisonburg City	552	4,528	0	1	1
Henrico	6,858	48,620	4	1	10
Henry	1,242	7,680	1	0	2
Highland	51	282	0	0	0
Hopewell City	663	4,213	0	0	0
Isle of Wight	758	5,439	4	6	2
King & Queen	148	839	0	2	0
King George	422	3,979	0	1	1
King William	319	2,186	0	0	2

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Lancaster	159	1,443	0	0	0
Lee	711	3,694	0	0	0
Lexington City	62	488	0	0	0
Loudoun	5,350	53,985	4	3	14
Louisa	771	4,692	1	1	1
Lunenburg	249	1,728	0	0	0
Lynchburg City	1,407	8,720	2	1	3
Madison	192	1,908	0	0	0
Manassas City	849	6,474	1	0	3
Manassas Park City	267	2,516	0	0	0
Martinsville City	304	2,504	0	0	0
Mathews	204	1,290	0	0	0
Mecklenburg	771	4,883	0	0	0
Middlesex	211	1,315	0	0	0
Montgomery	1,295	9,752	1	0	0
Nelson	287	2,110	2	0	1
New Kent	455	2,781	0	0	0
Newport News City	4,307	31,571	0	7	7
Norfolk City	4,938	35,124	2	8	2
Northampton	298	1,918	0	0	0
Northumberland	169	1,499	0	0	0
Norton City	116	807	0	0	0
Nottoway	394	2,407	0	0	0
Orange	560	5,165	0	0	2
Page	392	3,692	0	0	0
Patrick	444	2,647	0	0	0
Petersburg City	540	4,901	2	1	0
Pittsylvania	1,385	9,338	0	1	1
Poquoson City	267	2,501	0	0	0
Portsmouth City	2,105	15,405	0	2	0
Powhatan	602	4,434	0	0	2
Prince Edward	556	2,666	0	0	0
Prince George	792	6,297	0	0	0
Prince William	8,212	72,989	4	4	4

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Pulaski	793	4,933	0	0	0
Radford City	233	1,575	0	0	0
Rappahannock	119	941	0	0	0
Richmond County	167	1,195	0	0	1
Richmond City	4,622	23,769	2	2	1
Roanoke	2,218	15,105	2	7	0
Roanoke City	1,831	12,941	1	1	1
Rockbridge	380	2,827	1	1	2
Rockingham	1,389	11,850	1	0	3
Russell	796	4,424	0	0	0
Salem City	474	3,948	0	0	0
Scott	694	3,996	0	1	0
Shenandoah	863	6,266	0	0	1
Smyth	847	5,066	0	0	2
Southampton	501	2,932	0	1	1
Spotsylvania	3,046	24,304	0	4	1
Stafford	2,368	26,582	1	0	1
Staunton City	430	2,761	1	0	1
Suffolk City	1,668	14,026	2	1	3
Surry	129	1,044	0	0	0
Sussex	201	1,301	0	0	0
Tazewell	983	6,911	0	1	0
Virginia Beach City	9,699	72,477	5	21	5
Warren	632	5,359	0	0	1
Washington	1,111	7,561	0	0	0
Waynesboro City	326	3,153	0	0	0
West Point	94	807	0	0	0
Westmoreland	233	1,852	0	0	0
Williamsburg-James City	1,467	10,410	1	1	3
Winchester City	640	3,732	0	0	0
Wise	889	6,833	0	0	0
Wythe	490	4,398	0	0	0
York	1,228	12,844	5	9	9

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Department of Ed.			0	0	0
OTHER – VSDB-S			0	0	1